Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the	)	
Pay Telephone Reclassification	)	CC Docket No. 96-128
and Compensation Provisions of the	)	
Telecommunications Act of 1996	)	
	)	
AT&T Request for Limited Waiver	)	
of the Per-call Compensation Obligation	)	
	)	

MEMORANDUM OPINION AND ORDER

Adopted: April 3, 1998 Released: April 3, 1998

By the Chief, Common Carrier Bureau:

I. INTRODUCTION

1. In this order we grant interexchange carriers ("IXCs") a waiver of the payphone compensation requirements of the *Payphone Orders*[1] to enable them to pay to payphone service providers ("PSPs") per-phone instead of per-call compensation for subscriber 800 and access code calls[2] from

[1] *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Report and Order, 11 FCC Rcd 20,541 (1996) ("*Report and Order*"); Order on Reconsideration, 11 FCC Rcd 21,233 (1996) ("*Order on Reconsideration*") (together the "*Payphone Orders*"). The *Payphone Orders* were affirmed in part and vacated in part. *See Illinois Public Telecomm. Ass'n v. FCC*, 117 F.3d 555 (D.C. Cir. 1997) (*"Illinois Public Telecomm."*). *See also* Second Report and Order, 13 FCC Rcd 1778 (1997) ("*Second Report and Order*"), *pets. for recon. pending, review pending, MCI Telecomm. Corp. v. FCC*, D.C. Circuit No. 97-1675 (filed Nov. 7, 1997); *Sprint Corp. v. FCC*, D.C. Circuit No. 97-1685 (filed Nov. 13, 1997); *Personal Communications Industry Association v. FCC*, D.C. Circuit No. 97-1709 (filed Dec. 1, 1997); *Illinois Public Telecommunications Association v. FCC*, D.C. Circuit No. 97-1713 (filed Dec. 3, 1997).

[2] An "access code" is a sequence of numbers that, when dialed, connects the caller to the operator service provider ("OSP") associated with that sequence, as opposed to the OSP presubscribed to the originating line. Access codes include 800 numbers, 10XXX and 101XXXX in equal access areas and "950" Feature Group B dialing (950-10XXX or 950-1XXX) anywhere, where the three digit XXX or four digit XXXX denotes a particular IXC. *See Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation*, 7 FCC Rcd 3251, 3251 n.1 (1992) ("*OSP Second Report and Order*"). "Subscriber 800 calls" consist of calls to an 800 number assigned to a particular subscriber. *See Implementation of Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Notice of Proposed Rulemaking, 11 FCC Rcd 6716 (1996) (*"NPRM"*). In this order, subscriber 800 encompasses toll-free subscriber calls, including 888 numbers. *See Toll Free Service Access*

payphones when payphone-specific coding digits[3] are not available from those payphones. On March 9, 1998, the Common Carrier Bureau ("Bureau") adopted a Memorandum Opinion and Order clarifying the payphone-specific coding digit requirements set forth in the *Payphone Orders* and granting limited waivers of the requirement that local exchange carriers ("LECs") provide payphone-specific-coding digits to PSPs, and that PSPs provide payphone-specific coding digits from their payphones to IXCs, before PSPs can receive per-call compensation from IXCs for subscriber 800 and access code calls.[4] This waiver order serves as a companion order to the *Bureau Coding Digit Waiver Order*, because in this order we grant IXCs[5] a waiver of the per-call compensation requirement so they may pay per-phone instead of per-call compensation for the payphones for which we granted waivers in the *Bureau Waiver Order*[6] and the

Codes, 11 FCC Rcd 2496 (1996); *see also Second Report and Order*, 13 FCC Rcd at 1780, para. 2.

[3] Payphone-specific coding digits provide a method for LECs to transmit, with the automatic number identification (ANI), information (coding number or digits) identifying a call as having been placed specifically from a payphone. *Order on Reconsideration*, 11 FCC Rcd 21,265-66, para. 64. The "27" payphone-specific coding digit identifies a "dumb" payphone that relies on a LEC switch for functions and features. A dumb payphone uses a LEC coin line that rates the call, announces the charge, interrupts the call for coin deposit, terminates the call if coins are not deposited, and controls the acceptance and return of coins. Coin line dumb payphone calls are routed automatically to an operator switch that provides the intelligent functionality. The payphone-specific coding digit "70" is used for non-network controlled payphones (smart payphones on dumb lines) owned by LEC and nonLEC PSPs. "Smart" payphones are connected to "dumb lines" that do not perform the coin and control functions performed by the "smart lines" to which dumb payphones ("27" coding digit) are connected. The smart payphone has the intelligence within the payphone that performs the rating, announcement of rates, coin acceptance and return, as well as accounting in some cases. The payphone-specific coding digit "29" is used to identify prison/inmate payphones, which include outward call screening. The "07" coding digit provided through automatic number information indicators (ANI ii) used to identify smart payphones, owned primarily by independent PSPs, is not payphone-specific because it also identifies other calls such as hospital and hotel calls. IXCs can identify calls originating from payphones using the "07" coding digit by comparing the call ANI to payphone ANI lists provided by the LECs. *See Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Memorandum Opinion and Order, CC Docket No. 96-128, DA 98-481 (rel. Mar. 9, 1998) ("*Bureau Coding Digit Waiver Order*").

[4] *See Bureau Coding Digit Waiver Order* at paras. 19-20.

[5] For purposes of paying compensation for compensable calls and other associated obligations, such as tracking calls, we note that the term "IXC" includes a LEC when it provides interstate, intraLATA toll service. *See Report and Order*, 11 FCC Rcd at 20,584, para. 83 n.293; *Order on Reconsideration*, 11 FCC Rcd at 21,270, paras. 74-75 & 21,278, para. 92. Carriers required to pay per-call compensation pursuant to the *Payphone Orders* also are referred to as "payors" in this order.

[6] *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, 12 FCC Rcd 16,388 (1997) ("*Bureau Waiver Order*").

Bureau Coding Digit Waiver Order.[7]

2. Moreover, in this order we address a letter filed by AT&T Corporation ("AT&T") requesting that AT&T, and other similarly situated IXCs, receive a waiver to pay per-phone rather than per-call compensation when payphone-specific coding digits are not available for a payphone.[8] In this order, we grant in part AT&T's request that AT&T and other similarly situated IXCs be permitted to compensate PSPs on a per-phone basis, as discussed below, where payphone-specific coding digits are not available. We conclude that the waiver we grant in this order to allow IXCs to pay per-phone compensation when payphone-specific coding digits are not available from a payphone is necessary to ensure that PSPs receive fair compensation while LECs, PSPs, and IXCs transition to providing and receiving payphone-specific coding digits to identify calls from payphones. We also conclude that granting this waiver and allowing IXCs to pay per-phone instead of per-call compensation where payphone-specific coding digits are not available is in the public interest.

3. The *Bureau Coding Digit Waiver Order* required that payments must be remitted at least on a quarterly basis. That order required that the payment for the October 1997 through December 31, 1997 period must be paid no later than April 1, 1998. Because the waiver we grant herein will require some IXCs to obtain additional information and calculate their per-phone compensation amounts, these IXCs may need additional time to make the payments to PSPs for the October 1997 through December 31, 1997 period for payphone compensation. Thus, IXCs may make this payment no later than April 30, 1998, but must include additional interest for the period after April 1, 1998, at the rate of 11.25 percent simple interest per year, if the payment was not made by April 1, 1998.

4. This order is effective immediately to ensure that all PSPs continue to receive compensation as required by the *Payphone Orders* and the *Second Report and Order.* Without this waiver, and the clarifications set forth in this order, many PSPs would not be compensated for payphone calls that began October 7, 1997, because the LECs servicing them are not yet able to provide payphone-specific coding digits, and some of the IXCs are unable to identify certain payphone calls. The immediate implementation of this order is crucial to the Commission's efforts to ensure fair compensation for all PSPs, encourage the deployment of payphones, and enhance competition among PSPs, as mandated by Section 276.

II. BACKGROUND

A. *Payphone Compensation*

5. In the *Payphone Orders*, the Commission adopted new rules and policies governing the

---

[7] This waiver order relies on the record established for the *Bureau Coding Digit Waiver Order* and *ex partes* received subsequent to the release of that order. *Pleading Cycle Established for Petitions to Waive Payphone Coding Digits,* Public Notice, 12 FCC Rcd 17,340 (1997) *("Public Notice")*.

[8] *See* Letter to John B. Muleta, FCC from E.E. Estey, AT&T (Oct. 14, 1997) (*"AT&T Letter"*).

payphone industry to implement Section 276 of the Communications Act.[9] Those rules and policies in part establish a plan to ensure fair compensation for "each and every completed intrastate and interstate call using [a] payphone[.]"[10] Prior to the *Payphone Orders*, PSPs received no revenue for originating certain calls (*i.e.*, for subscriber 800 and other toll-free number calls) and could not block callers from making some of these calls (*e.g.*, access code calls). Based on evidence in the record, the Commission concluded that PSPs must be compensated, pursuant to Section 276 of the Act, for access code, subscriber 800, and other toll-free number calls, whether they are jurisdictionally intrastate or interstate.

6. In the *Payphone Orders*, the Commission concluded that the appropriate per-call compensation amount, in the absence of a negotiated agreement, ultimately is the amount the particular payphone charges for a local coin call, because the market will determine the fair compensation rate for those calls.[11] The Commission further concluded that if a rate is compensatory for local coin calls, then it is an appropriate compensation amount for other calls as well, because the Commission found the costs of originating various types of payphone calls such as access code and subscriber 800 calls to be similar to the costs incurred when initiating a local coin call.[12]

7. Before moving to a local coin call default rate, however, the Commission found that it was necessary to observe over time how the payphone marketplace would function in the absence of regulation. The Commission recognized that competitive conditions, which are a prerequisite to a deregulatory market-based approach, did not yet exist, and would not be achieved instantaneously. Therefore, the Commission established a two-phase interim plan to address coin calls and a two-year interim plan for payphone compensation for subscriber 800 and access code calls, based on a rate of $0.35 per call, beginning November 7, 1996. Under the first phase of interim compensation, the Commission required IXCs with annual toll revenues in excess of $100 million to pay, collectively, a flat-rate compensation amount of $45.85 per payphone per month[13] in shares proportionate to their share of total market long distance revenues. During the second phase of interim compensation, the first year of per-call compensation, which began on October 7, 1997, all IXCs were required to pay $0.35 per subscriber 800 call or access code call unless they negotiated with the PSP to pay a different amount.

8. In *Illinois Public Telecomm.*, the court affirmed many aspects of the Commission's

---

[9] *Report and Order*, 11 FCC Rcd at 20,541; *Order on Reconsideration*, 11 FCC Rcd at 21,235.

[10] 47 U.S.C. § 276(b)(1)(A).

[11] *See Report and Order*, 11 FCC Rcd at 20,577, para. 70; *Order on Reconsideration*, 11 FCC Rcd at 21,242, para. 15. The Commission defined "fair compensation" as the amount to which a willing seller (*i.e.*, PSP) and a willing buyer (*i.e.*, customer, or IXC) would agree to pay for the completion of a payphone call. *Report and Order*, 11 FCC Rcd at 20,568, para. 52 n.187.

[12] *See Report and Order*, 11 FCC Rcd at 20,577-78, para. 70; *Order on Reconsideration*, 11 FCC Rcd at 21,268-69, para. 71.

[13] This compensation amount is based on an average of 131 subscriber 800 and access code calls per month at the default rate of $0.35 per call.

Payphone Orders, but it vacated, among other things: (1) the default per-call compensation rate the Commission had set for subscriber 800 and access code calls at the same market-based $0.35 rate as for local coin calls; and (2) the requirement that only those IXCs with annual toll revenues over $100 million pay PSPs for these calls during the first year of the interim period.[14] After receiving comment on this and other issues,[15] the Commission adopted the *Second Report and Order*, which established a default compensation rate of $0.284 per call, absent a negotiated agreement, for subscriber 800, access code, inmate, and 0+ calls.[16] The Commission also extended the default per-call compensation period from one to two years, for the first two years of per-call compensation, *i.e.*, from October 7, 1997 until October 6, 1999, to allow participants, including IXCs, LECs, and PSPs, additional time to adjust to market-based per-call payphone compensation for subscriber 800 and access code calls.[17]

B. *Payphone-Specific Coding Digits*

9. In the *Payphone Orders*, the Commission imposed a requirement that, by October 7, 1997, LECs transmit payphone-specific coding digits to PSPs, and that PSPs transmit those digits from their payphones to IXCs.[18] The Commission also required IXCs to implement methods to track payphone calls.[19] In the *Order on Reconsideration*, the Commission clarified that the provision of payphone-specific coding digits is a prerequisite to payphone per-call compensation payments by IXCs to PSPs for subscriber 800 and access code calls[20] and that each payphone must transmit coding digits that "specifically identify it as a payphone, and not merely as a restricted line."[21] Finally, that order clarified that LECs must make available to PSPs, on a tariffed basis, such coding digits as part of their ANI for each payphone.[22]

---

[14] *Illinois Public Telecomm.*, 117 F.3d at 558.

[15] *See Pleading Cycle Established for Comment on Remand Issues in the Payphone Proceeding,* CC Docket No. 96-128, DA 97-1673 (rel. Aug. 5, 1997) (*"Remand Notice"*).

[16] *Second Report and Order,* 13 FCC Rcd at 1796-1809, paras. 42-67. *See infra* note 52.

[17] The default per-call rate is the rate that applies in the absence of a negotiated agreement between parties during the first two years of per-call compensation. Thereafter, the default rate, in the absence of a negotiated agreement, is the market-based local coin rate less $0.066. For coinless payphones, $0.284 will continue to be the per-call default rate, absent a negotiated agreement. *Second Report and Order* at 1778-1779, para. 1 n.1.

[18] *See Report and Order*, 11 FCC Rcd at 20,591, paras. 98-99; *Order on Reconsideration*, 11 FCC Rcd at 21,265-66, para. 64, and 21,278-80, paras. 93-99.

[19] *See Report and Order*, 11 FCC Rcd at 20,590-91, paras. 96-97.

[20] *See Order on Reconsideration*, 11 FCC Rcd at 21,265-66, para. 64, and 21,278-80, paras. 93-99.

[21] *Id.*

[22] *Id.* at 21,265-66, para. 64.

10. On October 7, 1997, the Bureau provided, on its own motion,[23] a limited waiver until March 9, 1998, for those payphones from which the necessary coding digits to identify individual payphone calls were not provided.[24] The limited waiver was to afford LECs, IXCs, and PSPs an extended transition period for the provision of payphone-specific coding digits without further delaying the payment of per-call compensation for each and every call originated from a payphone as required by Section 276 of the Communications Act.[25] This limited waiver applied to the requirement that LECs provide payphone-specific coding digits to PSPs, and that PSPs provide coding digits from their payphones before they can receive per-call compensation from IXCs for subscriber 800 and access code calls. The Bureau stated, however, that LECs and PSPs capable of transmitting coding digits for some or all of their serving area remained obligated to do so.[26]

11. On March 9, 1998, in the *Bureau Coding Digit Waiver Order*, the Bureau clarified the requirements established in the *Payphone Orders* for the provision of payphone-specific coding digits by LECs and PSPs, to IXCs. Specifically, the Bureau clarified that flexible automatic numbering identification ("FLEX ANI")[27] and automatic number information indicators ("ANI ii") are the methods to provide payphone-specific coding digits that comply with the requirements of the *Payphone Orders*.[28]

---

[23] *See* Section 1.3 of the Commission's rules, 47 C.F.R. § 1.3.

[24] *Bureau Waiver Order*, 12 FCC Rcd at 16,388, para. 2.

[25] 47 U.S.C. § 276.

[26] *See Bureau Waiver Order*, 12 FCC Rcd at 16,388, para. 3.

[27] FLEX ANI, which is a switch software feature, enables the transmission of a number of additional coding digits with a call that can, *inter alia*, uniquely identify a call as coming from a payphone. FLEX ANI codes are generated in end office databases and FLEX ANI is more flexible and easily modified to add additional coding digits than conventional ANI ii. When FLEX ANI codes are available, they are outpulsed with the call, instead of the embedded hardcoded ANI ii digits. FLEX ANI enables the assignment of more two digit codes (potentially 00-99) for payphones in addition to the "27" code already provided by ANI ii, including "29" for prison/inmate payphones and "70" for "smart" payphones. FLEX ANI coding digits are transmitted as part of the ANI signaling sequence and are used by the receiving switch to identify the type of originating line or the type of call being made. *See Bureau Coding Digit Waiver Order* at para. 20.

[28] In most cases, when the IXC subscribes to Feature Group D (FGD access), LECs currently provide along with the billing number (ANI), the ANI ii, which identifies calls coming from certain payphones. ANI ii is a widely used technology that sends a two-digit code along with the ANI. The transmitted ANI ii codes, hardwired as part of the switch's generic software, identify the call as "27" if the call is from a "dumb" payphone or "07" for a restricted line, which includes "smart payphones" as well as other types of calls, such as hotel calls. Thus, ANI ii provides, along with the billing number, a unique coding digit identifying dumb payphones with the "27" code, but does not provide a unique coding digit identifying smart payphones, which are identified with the "07" coding digit that also identifies other calls such as hotel and hospital calls. To comply with the *Payphone Orders*, LECs must hardcode additional payphone-specific coding digits ("70," "29"). In the *Bureau Coding Digit Waiver* Order the Bureau required LECs to implement FLEX ANI unless "a LEC hardcodes into all of its switches all the payphone specific coding digits necessary for identifying payphone calls for per-call compensation." *Bureau Coding Digit*

The Bureau also clarified the requirement for federal tariffs that LECs must file pursuant to the *Payphone Orders*.[29] The Bureau also granted permissions and waivers under Part 69 of the Commission's rules allowing LECs to establish rate elements to recover the costs of implementing FLEX ANI to provide payphone-specific coding digits for per-call compensation.[30] In addition, the Bureau granted limited waivers to LECs, PSPs, and IXCs to facilitate the transition to per-call compensation and affirmed its grant, in the *Bureau Waiver Order*, of a limited waiver of five months, until March 9, 1998, to those LECs and PSPs who asserted that they could not provide payphone-specific coding digits as required by the *Payphone Orders*.[31]

12. In the *Bureau Coding Digit Waiver Order*, the Bureau emphasized that the IXC obligation to pay per-call compensation established in the *Payphone Orders* remains in effect.[32] As required in the *Bureau Waiver Order*, payphones appearing on the LEC-provided lists of payphones are eligible for per-call compensation even if they do not transmit payphone-specific coding digits.[33] As required in the *Payphone Orders* and the *Second Report and Order*, absent a negotiated agreement, IXCs must pay per-call compensation of $0.284, for all calls not otherwise compensated that they receive from payphones.[34] The *Bureau Coding Digit Waiver Order* required that payments must be remitted at least on a quarterly basis. That order stated that the payment for the October 1997 through December 31, 1997 period must be paid no later than April 1, 1998, and that LECs that have certified to the IXC that they comply with the requirements of the *Payphone Orders* must receive per-call compensation.[35] That order also stated that there are no state or federal certification requirements.[36] Additionally, that order recognized that there likely would be some disputes between IXCs and PSPs about the true number of compensable calls, and that these disputes should not be a basis for delay of payphone compensation payments.

13. In the *Bureau Coding Digit Waiver Order*, the Bureau deferred addressing AT&T's

---

Waiver Order at para. 2 n.9.

[29] *See id.* at paras. 34-43 (discussing tariffing requirements that LECs must file pursuant to the *Payphone Orders*); *see also Report and Order*, 11 FCC Rcd at 20,591, paras. 98-99; *Order on Reconsideration*, 11 FCC Rcd at 21,265-66, para. 64, and 21,278-80, paras. 93-99.

[30] 47 C.F.R. Part 69.

[31] *See Bureau Coding Digit Waiver Order* at paras. 70-71, 76-78, 80-82.

[32] *Id.* at para. 4.

[33] *Bureau Waiver Order*, 12 FCC Rcd 16,390-91, paras. 9-14.

[34] *See Bureau Coding Digit Waiver Order* at paras. 11-12 (discussing the payphone compensation requirements established in the *Payphone Orders* and the *Second Report and Order*).

[35] *See Order on Reconsideration*, 11 FCC Rcd at 21,293, paras. 131-32.

[36] *Id.*

request that it and similarly situated IXCs receive a waiver to pay per-phone rather than per-call compensation for payphones that do not provide payphone-specific coding digits.[37] The Bureau also deferred addressing whether a retroactive adjustment or true-up would be necessary. These issues, therefore, are discussed herein.

III. DISCUSSION

A. *AT&T Request for a Waiver to Pay Per-phone Compensation*

1. Background

14. The *Payphone Orders* established a two-phase interim compensation plan. Under the first phase of interim compensation, which extended from November 7, 1996, through October 6, 1997, IXCs with annual toll revenues in excess of $100 million were required to compensate PSPs on a flat-rate per-phone compensation basis in proportion to that carrier's share of the annual toll revenues.[38] Beginning October 7, 1997, IXCs were required to pay compensation on a per-call basis. AT&T states, however, that it will be unable to pay per-call compensation because of the waiver granted in the *Bureau Waiver Order*, which provides LECs and PSPs an extended time period within which to provide payphone-specific coding digits. Therefore, AT&T proposes an alternative method to enable it and other similarly situated IXCs to comply with the Commission's payphone compensation requirements and the *Bureau's Waiver Order*.[39]

15. AT&T contends that it cannot perform database matches of "07" coded calls to ensure that PSPs are compensated for such calls.[40] AT&T proposes, therefore, that the Commission modify the *Bureau Waiver Order* by allowing AT&T and other similarly situated carriers to comply with the Commission's payphone compensation requirements and the *Bureau Waiver Order* by allowing such carriers to pay compensation on a per-phone basis modeled on the formula that the Commission develops

---

[37] *See AT&T Letter* at 1.

[38] *See Report and Order*, 11 FCC Rcd at 20,578, 20,601, paras. 72, 119.

[39] *See AT&T Letter* at 1-2.

[40] *See id.* AT&T states that its ability to perform its obligations under the Commission's *Payphone Orders* is "severely prejudiced by the Bureau's waiver order" because AT&T "cannot track payphone calls on a per-call basis for the majority of payphone calls that require compensation during the waiver period." *Id.* at 2. AT&T states that it currently is able to track and pay per-call compensation for dial-around operator service calls because those calls are routed from its 4ESS switches to 5ESS switches within AT&T's network. AT&T's 5ESS switches can interconnect with an ancillary Originating Line Number Screening database maintained by the LECs to identify whether the dial-around call originated from a payphone. *Id.* at n.1. AT&T states, however, that it is not able, to track and compensate subscriber 800 calls from payphones that transmit a "07" coding digit because it would be prohibitively expensive for those calls to be rerouted to the 5ESS switches in order to use the line information database (LIDB) to determine whether such calls originated from payphones. *Id.* at 2.

for interim compensation.[41] AT&T proposes that the Commission permit carriers to use the per-phone compensation method to calculate a carrier's payment obligations during the waiver period for payphones that do not deliver the necessary coding digits.[42] AT&T also requests that the Commission require each LEC to provide the Commission and carriers with a list of the offices that currently can deliver payphone digits, and a schedule of dates by which the LECs other equal access end offices will be capable of delivering payphone-specific coding digits. The *Public Notice* sought comment on AT&T's request.[43]

2. Discussion

16. We grant, in part, AT&T's request that we waive the payphone compensation provisions and permit IXCs to pay per-phone—instead of per-call—compensation when payphone-specific coding digits are not provided with a payphone call's ANI.[44] In the *Report and Order*, the Commission concluded that the requisite technology exists for IXCs to track calls from payphones. The Commission recognized, however, that tracking capabilities vary from carrier to carrier, and that it may be appropriate, for an interim period, for some carriers to pay compensation for "each and every completed intrastate and interstate call" on a flat-rate basis until per-call tracking capabilities are in place.[45] In the *Bureau Coding Digit Waiver Order*, the Bureau explained that the record indicates that LECs, PSPs, and IXCs are encountering problems with transitioning to per-call compensation.[46] We conclude that AT&T has shown special circumstances for IXCs to pay per-phone instead of per-call compensation when payphone-specific coding digits are not available, particularly in light of the waivers granted within the *Bureau Waiver Order* and the *Bureau Coding Digit Waiver Order*.

17. Other IXCs also indicate a problem paying per-call compensation during the waiver

[41] *See id.* at 1-2.

[42] *See id.* at 1, 3. American Public Communications Council (APCC) argues that AT&T's claim that it can track access code calls on a per-call basis but not subscriber 800 calls is illogical. APCC Comments at 9.

[43] *Public Notice*, 12 FCC Rcd at 17,340.

[44] APCC argues that if the Commission decides to require per-call compensation for those payphones that transmit ANI then all IXCs should be required to pay per-call compensation on those payphones. In the alternative, APCC argues the Commission could mandate flat-rate compensation for all dumb line payphones. The LEC Coalition (the Bell Operating Companies (BOCs), General Telephone Corporation (GTE) and Southern New England Telephone (SNET)) and APCC argue that the Commission should consider limiting the scope of an IXC waiver to require compensation of access code calls on a per-call basis and subscriber 800 calls on a flat-rate basis. *See* APCC Reply at 9; LEC Coalition Reply at 6-8. Sprint Corporation (Sprint) supports AT&T's request to pay per-phone compensation when payphone-specific coding digits are unavailable. *See* Sprint Reply at 6.

[45] *Report and Order*, 11 FCC Rcd at 20,590-91, paras. 96-97.

[46] *See Bureau Coding Digit Waiver Order* at paras. 56, 58.

period when payphone-specific coding digits are not available.[47] Moreover in certain circumstances, such as payphones served by non-equal access switches, payphone-specific coding digits will not be available until the switches are replaced. Therefore, we also conclude that based on these problems, it is in the public interest to grant this waiver conditioned upon an IXC's compliance with the methodology set forth herein, which allows IXCs to pay per-phone compensation until payphone-specific coding digits are available for a payphone. We find that it is in the public interest to grant this waiver conditioned upon an IXC's compliance with the methodology set forth herein, and allow IXCs to pay per-phone compensation where payphone-specific coding digits are unavailable from a payphone, so that there is no further delay in the payment of payphone compensation.[48] This waiver is consistent with the Commission's conclusion in the *Payphone Orders* that it is appropriate for carriers to pay flat-rate or per-phone compensation for an interim period until carriers fully implement tracking capabilities.[49] The waiver granted herein does not apply if either the "27" coding digit or a FLEX ANI coding digit ("27," "70," "29") is available from a LEC for that payphone and that payphone is able to provide payphone-specific coding digits; where the payphone-specific coding digit is available, the per-call compensation requirements apply.[50]

B. *Per-call and Per-phone Compensation Requirements*

1. Compensation Requirements

18. In the *Bureau Waiver Order* and the *Bureau Coding Digit Waiver Order,* we required IXCs to pay per-call compensation.[51] Pursuant to the waiver we grant herein, beginning October 7, 1997, IXCs must either pay per-call, or per-phone compensation as described below, for payphones that do not provide payphone-specific coding digits. IXCs must pay per-call compensation for all payphones capable of providing a "27" ANI ii coding digit or FLEX ANI coding digits ("27," "70," "29") for compensable calls. IXCs must compensate payphones that do not provide payphone-specific coding digits ("27," "70,"

---

[47] *See, e.g.*, Letter to Magalie Roman Salas, FCC from Richard S. Whitt, WorldCom, Inc. (WorldCom), (Mar. 5, 1998) (stating that WorldCom cannot implement multiple treatment of ANI "07" calls and therefore, that it cannot pay per-call compensation until payphone-specific coding digits are available).

[48] Although the court in *Illinois Public Telecomm.* vacated the per-call compensation amount for the interim period and the approach for allocation of the compensation amount, the court did not vacate the use of per-payphone versus per-call compensation. 117 F.3d at 565.

[49] *See Report and Order*, 11 FCC Rcd at 20,596-97, paras. 110-12; *Order on Reconsideration*, 11 FCC Rcd at 21,280, para. 99. We note that our rules currently permit per-phone and other types of negotiated compensation agreements. *See* 47 C.F.R. § 1300(a).

[50] In the *Bureau Coding Digit Waiver Order*, the Bureau noted that some LECs would need additional time to implement FLEX ANI due, in part, to technical problems encountered in implementing FLEX ANI in certain switch types, such as problems with NORTEL switches that do not provide payphones-specific coding digits. *See Bureau Coding Digit Waiver Order* at paras. 55, 59.

[51] *Bureau Waiver Order*, 12 FCC Rcd at 16,389-90, paras. 8-9.

"29") either on a per-call basis or the per-phone method described below. Therefore, IXCs who choose to pay per-phone compensation pursuant to the waiver granted herein, must use payphone call volume information that is already available to them to determine the call volumes for which a payphone should be compensated when payphone-specific coding digits are not available for a specific payphone.[52] An IXC may choose to compensate those payphones that are not capable of providing payphone-specific coding digits on a per-call basis where the IXC maintains a per-call tracking mechanism, such as tracking payphone calls from payphones that transmit an "07" digit and then comparing those calls to ANI lists.[53] We note, however, that an IXC may not compensate some payphones that do not provide payphone-specific coding digits (but do provide an "07" ANI ii coding digit) on a per-call basis and other payphones that do not provide payphone-specific coding digits (but do provide an "07" ANI ii coding digit) on a per-phone basis, except for those payphones that are in the process of changing from per-phone to per-call compensation.[54] We note that the default rate established in the *Second Report and Order*, $0.284, which terminates at the conclusion of per-call compensation—October 7, 1999—will continue to remain in effect as a default compensation rate, absent a negotiated agreement, for calls originated from those payphones that are not able to provide payphone-specific coding digits.[55]

[52] *See Bureau Coding Digit Waiver Order* at para. 36, which states that LECs must provide information on payphones that do and do not provide payphone-specific coding digits. As the Commission stated in the *Payphone Orders*, some PSPs also are entitled to compensation for 0+ calls and calls originated from inmate payphones, which are primarily 0+ calls. Specifically, we found that PSPs should be compensated for 0+ and inmate calls where not compensated pursuant to contract due to legal impediments, thus, BOC payphones and other similarly situated payphones. Because we find that per-call tracking exists for these call types, the compensation provisions set forth herein are inapplicable to 0+ and inmate calls. To the extent that carriers do not track 0+ and inmate calls, the compensation scheme set forth herein will apply. For example, if a carrier does not receive the proper coding digit from a payphone to enable that carrier to determine whether a 0+ call originated from that payphone, that carrier will compensate that particular payphone for 0+ calls on a per-phone basis. If the carrier is not receiving the proper coding digit from a LEC payphone, such as GTE, then that carrier will compensate the LEC payphone for 0+ calls originated from LEC payphones based on the compensation scheme described herein for compensation for subscriber 800 and access code calls. We note, however, that the carriers should not include 0+ call counts in call counts with subscriber 800 and access code calls. Compensation for 0+ and inmate calls is in addition to compensation for subscriber 800 and access code calls. We further note that per-phone compensation for 0+ calls will be limited because compensation for such calls is limited to those PSPs who were legally precluded from contracting for compensation for such calls, and further, that most carriers have the ability to track 0+ calls.

[53] MCI Telecommunications Corporation (MCI) supports the ability of IXCs to have a choice of paying per-call or per-phone compensation depending on their capabilities to track payphone calls. MCI Reply at 6. APCC argues that this approach would lead to IXCs using either approach when it was financially most advantageous. APCC Reply at 9. MCI opposes APCC's argument that if the Commission grants AT&T's waiver request to enable carriers to pay compensation on a per-phone basis during the waiver period, that all carriers must pay on a per-phone basis. MCI argues that carriers that are able should be allowed to pay on a per-call basis. MCI Reply at 6. Sprint requests that the Commission give IXCs the choice of paying per-phone or per-call until the waiver ends or coding digits are provided.

[54] *See infra* paras. 19 & note 57; 24 & note 65.

[55] *See Bureau Coding Digit Waiver Order* at para. 12 & n.47.

19. As we discussed in the *Bureau Coding Digit Waiver Order*, LECs must provide ANI lists and lists of end offices that are not providing payphone-specific coding digits that specifically identify smart and dumb payphones to IXCs.[56] In accordance with the compensation mechanism described below, IXCs must pay per-call compensation, not per-phone compensation, once FLEX ANI is available in an end office.[57] We note that if payphone-specific-coding digits are available for a payphone in an end office, the fact that an IXC may decide not to take FLEX ANI from the LEC for that end office does not relieve the IXC of paying per-call compensation for that payphone once payphone-specific coding digits are available. The waiver to pay per-phone compensation does not apply in this case.

20. We also clarify the requirements set forth in the *Bureau Coding Digit Waiver Order*, that LECs must provide IXCs and PSPs with certain information on request.[58] Because IXCs choosing to pay per-call compensation for smart payphones even when payphone-specific coding digits are not available will have to compare calls with an "07" ANI ii digit with a LEC ANI list, we require that the LEC ANI lists provided to the IXCs as required in the *Bureau Coding Digit Waiver Order* also indicate whether the smart payphones are transmitting the "07" digit. LECs also must provide FLEX ANI and ANI ii payphone-specific coding digits as soon as they are available on a switch to each IXC once the IXC requests the service for payphone compensation.

2. Compensation Methodology

---

[56] *Bureau Coding Digit Waiver Order* at para. 36.

[57] IXCs are responsible for requesting FLEX ANI. Once FLEX ANI is available for payphones served by a LEC, the IXC must pay per-call compensation instead of per-phone compensation for the first day of the next quarter and thereon so long as the IXC has had 30 days prior to the quarter when payment is due to implement FLEX ANI after payphone-specific coding digits are available for payphones that were not previously capable of providing payphone-specific coding digits. For example, if a payphone is able to provide payphone-specific coding digits on July 17, 1998, that payphone must be compensated on a per-call basis for the quarter beginning October 1998. On the other hand, if a payphone does not become capable of providing payphone-specific coding digits until September 15, 1998, then that payphone could continue to receive per-phone compensation and would not have to be compensated on a per-call basis until January 1999. We note, however, that IXCs are free to pay on a per-call basis earlier if they are able.

[58] In the *Bureau Coding Digit Waiver Order*, we required that beginning March 27, 1998, until a LEC has implemented FLEX ANI for all payphones it serves, it must provide monthly to IXCs and PSPs, upon request, information on: (1) end offices where FLEX ANI is available; and (2) proposed dates for the availability of FLEX ANI by end office for all areas where it is not yet available. Beginning March 27, 1998, all LECs must provide on a monthly basis to IXCs, upon request: (1) the number of smart and the number of dumb payphones that are owned by the LEC, PSP, and independent PSPs in the LEC service area; and (2) the ANI for smart payphones and the ANI for dumb payphones owned by the LEC and independent PSPs that are providing payphone-specific coding digits and those that are not providing payphone-specific coding digits in the LEC service area. We required that in these two reports, LECs indicate which end offices and payphone ANI's are coding-digit-capable and which payphone ANIs are not coding-digit-capable. A payphone is "coding-digit-capable" when it is able to transmit payphone-specific coding digits that are capable of reaching an IXC point of presence (POP) for subscriber 800 and access code calls from payphones using 10XXX and 101XXXX. *See Bureau Coding Digit Waiver Order* at para. 36. .

21. IXCs must pay per-call compensation for a payphone if ANI ii payphone-specific coding digits ("27") or FLEX ANI payphone-specific coding digits ("27," "70," "29") are available to the IXC. We grant a waiver to IXCs and allow them to compensate PSPs on a per-phone basis for those payphones that are not able to provide payphone-specific coding digits conditioned upon the IXCs' compliance with the methodology set forth in this order. IXCs electing to pay per-phone compensation in accordance with the waiver we grant herein must calculate the average number of subscriber 800 and access code calls based on information obtained from BOC dumb payphones transmitting the "27" coding digit. We divide payphones into five categories for determining the methodology used to calculate per-phone compensation: (1) payphones able to provide payphone-specific coding digits; (2) LEC payphones that are not able to provide payphone-specific coding digits served by equal access switches (except those payphones subject to category (5)); (3) independent PSP payphones that are not able to provide payphone-specific coding digits served by equal access switches (except those payphones subject to category (5)); (4) payphones served by non-equal access switches; and (5) payphones on equal access switches owned by small and midsized LECs granted a waiver from the implementation of FLEX ANI because they are unable to recover the cost of FLEX ANI implementation over a reasonable period ("small and midsized LEC waiver") pursuant to paragraph 76 of the *Bureau Coding Digit Waiver Order*.

22. Although we describe the compensation method for these categories individually, with the exception of the compensation method for those payphones that are able to provide payphone-specific coding digits, pursuant to the methodology set forth for other categories, IXCs must use call volume information obtained from October 1997 through March 31, 1998 (the "sample period"), to establish average subscriber 800 and access code call volumes per-phone to compensate PSPs for calls originated from their payphones during the fourth quarter of 1997 and the first quarter of 1998 (from October 7, 1997 through March 31, 1998).[59] Thereafter, IXCs electing to pay per-phone compensation pursuant to the waiver granted herein will base compensation owed to PSPs for payphones that are not able to provide payphone-specific coding digits on call volumes obtained from BOC dumb payphones that are able to provide payphone-specific coding digits during the quarter for which compensation is owed.[60] Regardless whether a payor pays per-call or per-phone compensation, each payor must compensate PSPs $0.284 per call, adjusted for interest where appropriate. In addition, although the compensation mechanism described below calculates compensation on a monthly basis, we note that compensation must be remitted at least on a quarterly basis absent alternative arrangements between the PSP and the IXC.[61] We emphasize,

---

[59] To establish monthly call volumes for the entire month of October, if a payor did not track calls for the period October 1 through October 6, a payor must determine the average daily call volumes for the month of October and then add the call volumes for the first six days to the call volumes for the rest of the month to get a monthly total for October that can be used with the call volumes for the other months to establish an average for the sample period.

[60] For example, if compensation is due to PSPs for the second quarter of 1998, IXCs will pay PSPs based on call volumes collected from BOC dumb payphones during April-June 1998.

[61] When paying per-phone compensation as described herein, payphone compensation payors should note that payments by each payor for each payphone being compensated by that payor on a per-phone basis will be the same, although different payors will vary in the number of calls for which they must compensate payphones receiving per-phone compensation.

however, that payphones can receive compensation only for those months that they were in service.[62]

23. IXCs must maintain the information they use to develop per-call and per-phone compensation payments to PSPs. In the *Report and Order*, the Commission required that IXCs initiate an annual verification of their per-call tracking functions to be made available for Commission inspection upon request, for the 1998 calendar year to ensure that IXCs are tracking all of the calls for which they are obligated to pay compensation.[63] The *Report and Order* requires that payors file a report with the Bureau on the number of compensable calls and compensation paid for the 1998 calendar year within 90 days after the 1998 calendar year.[64] Nothing in this waiver order relieves IXCs of the responsibility of maintaining this information. Payors must be prepared to submit their compensation calculations and payment records if requested by the Bureau.

a. *Payphones capable of providing payphone-specific coding digits*

24. The first category, payphones capable of providing payphone-specific coding digits must be compensated on a per-call basis. Compensation must be remitted at least on a quarterly basis absent alternative arrangements between the PSP and the IXC. If a payphone that is not able to provide payphone-specific coding digits becomes capable of providing payphone-specific coding digits in the first 60 days of a quarter, then the IXC will be responsible for compensating that particular PSP on a per-call—instead of per-phone—basis beginning the next quarter.[65] The payor will multiply the number of calls received from each PSP's payphone capable of providing payphone-specific coding digits by $0.284 to compute compensation owed to that PSP.

b. *LEC payphones that are not capable of providing payphone-specific coding digits*

---

[62] Moreover, the *Bureau Coding Digit Waiver Order* clarified that within 30 days of the release of that order, PSP payphones must be on LEC payphones lines to continue to be eligible for payphone compensation. The waiver we grant in this orders for certain payphones to receive per-phone compensation does not apply to those payphones that are not on LEC payphone lines as required in the *Bureau Coding Digit Waiver Order*. *See Bureau Coding Digit Waiver Order* at para. 33.

[63] *Report and Order*, 11 FCC Rcd at 20,592, para. 101.

[64] *Id. See* 47 C.F.R. § 64.1320(a).

[65] For example, if a payphone becomes able to provide payphone-specific coding digits during the first 60 days of the third quarter 1998 (i.e., July 17, 1998), that payphone will receive per-phone compensation for the remainder of the quarter. The payphone will receive per-call compensation beginning the following quarter. The IXC must pay per-call compensation for the entire fourth quarter and thereafter for that payphone. We note, however, that if an IXC chooses, it may pay per-call compensation immediately upon taking FLEX ANI. We decline to require, however, that IXCs pay per-call rather than per-phone compensation for a payphone the same quarter that a particular payphone is capable of transmitting payphone-specific coding digits because we recognize that there may be confusion in calculating appropriate payments and the IXC and LEC may need time to test and provision FLEX ANI for that IXC. *See supra* note 57.

25. The second category, LEC payphones that are not able to provide payphone-specific coding digits will be compensated on a per-phone basis. We base compensation for LEC payphones that are not capable of providing payphone-specific coding digits on the average number of subscriber 800 and access code calls realized from BOC dumb payphones that are able to provide payphone-specific coding digits. There is insufficient information on the record to suggest that LEC payphones that are not able to provide payphone-specific coding digits realize different call volumes than BOC payphones that are able to provide payphone-specific coding digits. Therefore, we find that it is appropriate to base compensation for LEC payphones that are not able to provide payphone-specific coding digits on call volumes realized by BOC payphones that are able to provide payphone-specific coding digits.

26. To determine the amount of compensation due to LEC payphones that are not able to provide payphone-specific coding digits,[66] the payor will calculate the average number of subscriber 800 and access code calls it received from BOC dumb payphones that are able to provide payphone-specific coding digits (the "27" coding digit) from October 1, 1997 through March 31, 1998 (the sample period).[67] First, the IXC will sum the number of completed subscriber 800 and access code calls it received from all BOC dumb payphones that were capable of providing payphone-specific coding digits during this period and divide by six. This results in the average number of subscriber 800 and access code calls received from all BOC dumb payphones per month.[68] Second, the payor will obtain from the BOCs the number of BOC dumb payphones that were capable of providing payphone-specific coding digits as of the first of each month for the sample period. The payor will sum the figures and divide by six. This is the average number of BOC dumb payphones able to provide payphone-specific coding digits during the sample period.[69] Third, the payor will divide the average number of calls calculated above in step one

---

[66] We note that this compensation method is for those payphones that are located on equal access switches.

[67] We require payors to compute compensation owed to LEC PSPs and independent PSPs based on data for six months, instead of merely the first quarter of per-call compensation, to account for the potential seasonality issues that cause payphone call volumes to fluctuate.

[68] We recognize that for access code calls made from dumb payphones using 10XXX, the coding digit will be passed to the IXC, even if the payphone does not otherwise provide payphone-specific coding digits. *See* Letter from Marie Breslin, Bell Atlantic to Magalie Roman Salas, Secretary, FCC (Mar. 3, 1998). Therefore, when IXCs sum the total number of subscriber 800 and access code calls that its records show were received from all BOC dumb payphones, that sum would be slightly greater than if the IXC summed those calls received from only BOC dumb payphones that generally provide the payphone-specific coding digits. Since most access code calls are made by dialing an 800 number, however, the difference should be minor relative to either sum. IXCs are free, however, to sum the calls from only BOC dumb payphones that generally do provide payphone-specific coding digits. To the extent that determining the number of calls from all BOC dumb payphones overstates the average number of payphone calls from the IXC, it would tend to offset concerns of payphone owners that smart payphones deserve a higher call volume than dumb payphones. *See infra* para. 29.

[69] We emphasize that the divisor consists only of those payphones that are capable of transmitting the appropriate coding digits. The BOCs and other LECs have reported some technical problems in transmitting payphone-specific coding digits in certain cases even when FLEX ANI is available for a payphone. In the *Bureau Coding Digit Waiver Order* we required that LECs indicate which end offices and payphone ANI's are "coding-digit-

(1) by the average number of payphones calculated in step two (2). This division results in the average call volume per month for BOC dumb payphones that are providing the "27" coding digit (either through ANI ii, or FLEX ANI). This average number will be the number of calls for which compensation is due per month to each LEC payphone that is not capable of providing payphone-specific coding digits.[70] Lastly, the payor will multiply the average monthly call volume by $0.284 to compute compensation owed per- phone per month.[71] As discussed above,[72] this data will be used to compensate payphones for the last quarter of 1997 and the first quarter of 1998. Thereafter, LEC dumb payphones will be compensated using this same methodology based on call volume information obtained from BOC dumb payphones during the applicable quarter using three months of data rather than six months of data.[73]

27. The LEC Coalition requests that BellSouth dumb payphones be excluded from any call volume calculation, because BellSouth locates dumb payphones in only the lowest call volume locations.[74] We decline to adjust call volume calculations to account for the possibility that BellSouth may place dumb

---

capable" because of these temporary technical problems. A payphone is "coding-digit-capable" when it is able to transmit payphone-specific coding digits that are capable of reaching an IXC point of presence (POP) for subscriber 800 and access code calls from payphones using 10XXX and 101XXXX. *See Bureau Coding Digit Waiver Order* at para. 36. For example, according to Bell Atlantic, some tandem switches strip out the FLEX ANI digits when transferring 800/888 calls to the IXCs. Access code calls utilizing the 10XXX access code that are routed through this type of tandem would retain the proper coding digit. *See* Letter to Magalie Roman Salas, Secretary, FCC from Marie Breslin, Bell Atlantic (Mar. 3, 1998). Payphones such as those on Nortel switches and those encountering a problem with the tandem should not be included in the divisor. Therefore, it is incumbent on the BOCs to identify accurately the number of payphones that are capable of transmitting the appropriate coding digits to IXCs in the divisor they provide to IXCs for the purpose of calculating the average number of calls per month for BOC dumb payphones.

[70] In calculating the amount owed to PSPs per-phone for the month of October, the payor may divide the monthly average per-phone rate for the month by 31 days and subtract for six days to begin per-phone compensation on October 7, 1998.

[71] Because payphone compensation is generally paid quarterly, not monthly, to compute the amount of compensation owed per quarter, the payor needs to multiply the compensation owed per month for each payphone by three. For the sample period, which includes two quarters, the compensation owed per month per-phone would be multiplied by six.

[72] *See supra* para. 22.

[73] For example, compensation due to LEC payphones that are not able to provide payphone-specific coding digits for the second quarter will be based on call volume information obtained from BOC dumb payphones during the second quarter. Therefore, if the BOC PSP received on average 35 calls from a particular payor per-phone per month during the second quarter, then the LEC PSP will receive 35 calls per-phone per month for calls originated from its payphones for that quarter.

[74] Letter to Rose M. Crellin, FCC from Michael K. Kellogg, Coalition (Mar. 30, 1998). The LEC Coalition further asserts that US West smart payphones have higher volumes than its dumb payphones and that it also locates dumb payphones in areas with lower call volumes and smart payphones in areas with higher call volumes.

payphones only in the lowest call volume locations. We find that different BOCs created different placement strategies for their payphones. While BellSouth may have placed dumb payphones in areas with low call volumes, other BOCs likely have placed dumb payphones in high call volume areas, such as airports and truckstops. Additionally, the proportion of dumb BOC payphones to smart BOC payphones varies among BOCs. Due to the different placement strategies and the variance among payphone types, call volumes will vary among BOCs. Therefore, omitting what might be the lowest call volume data from the sample would not lead to an unbiased estimate of BOC payphone call volumes, because it would artificially leave in the highest remaining data. Also, the LEC Coalition reported that a large proportion of the payphones served by LEC Coalition members are already providing payphone-specific coding digits and that number continues to increase as BOCs continue to implement FLEX ANI and overcome temporary problems they reported in implementing FLEX ANI.[75] Moreover, many other payphones will be paid per-call compensation by IXCs. Thus, any negative effect of including BellSouth payphones in the call volume calculations will be temporary and small.

c. *Independent PSP payphones that are not capable of providing payphone-specific coding digits*

28. The third category, independent PSP payphones that are not capable of providing payphone-specific coding digits,[76] also will be compensated on a per-phone basis as calculated above for LEC payphones that are not capable of providing payphone-specific coding digits. The record indicates that many independent PSP payphones cannot transmit the appropriate coding digits at this time.[77] Nonetheless, independent PSP payphones should be compensated for calls originated from their payphones in a timely manner. Therefore, per-phone compensation for independent PSPs must be based on call volumes from BOC dumb payphones that are capable of providing payphone-specific coding digits, because such call volume information is available to each IXC and provides a reasonable surrogate for independent payphone call volumes during the waiver period.

29. APCC argues that independent PSPs generate higher call volumes than BOC PSPs, and therefore, suggests that the Commission require that independent PSPs be compensated by IXCs based on BOC call volumes multiplied by a factor to reflect the higher call volumes received by independent as opposed to LEC payphones.[78] MCI argues, however, that independent PSPs should not be compensated for higher call volumes per-phone than BOC or LEC payphones.[79] We decline to increase the average

[75] *Bureau Coding Digit Waiver Order* at para. 65.

[76] To clarify, payphones that will receive compensation under the mechanism described in this section are independent payphones that are not capable of providing payphone-specific coding digits and are served by equal access switches.

[77] *See Bureau Coding Digit Waiver Order* at paras. 57-59.

[78] *See* Letter to Mary Beth Richards, FCC from Albert H. Kramer, APCC at 4 (Mar. 5, 1998).

[79] *See* Letter to Magalie Roman Salas, Secretary, FCC from Leonard Sawicki, MCI (Mar. 19, 1998).

call volumes calculated above from BOC payphone call volumes for independent PSPs' payphones. We find that data on the record indicates that the call volumes may be similar.[80] In the *Report and Order*, the Coalition reported an average of 132 calls per payphone per month. Independent PSPs reported varying call volumes ranging from 124 to 140 compensable calls per payphone per month; the average of which was 131 calls per payphone per month.[81] Despite these differences, the Commission established one call volume for independent and LEC PSPs, declining to establish the different call volume amounts presented by parties. In adopting a uniform compensation rate, the Commission noted that some differences may exist among various PSPs, but found that each PSP should receive the same compensation amount for subscriber 800 and access code calls. The Commission also sought to allow all competitors equal opportunity to compete for essential aspects of the payphone business.[82] We similarly decline to establish separate call volume amounts for the purpose of this limited waiver, and conclude instead that we should not treat the call volumes differently based on ownership characteristics. Although the number of compensable calls may vary over time due to seasonality, location, and other issues, more recent data on the record still indicates that call volumes from independent PSPs and BOC payphones are similar.[83] For example, call volume data submitted by the LEC Coalition for three BOCs indicates that call volumes ranged from 132 to 146 calls per payphone per month during the last quarter of 1997 and part of the first quarter of 1998.[84] In comparison, independent PSPs submitted data indicating call volumes of approximately 149 calls per payphone per month for approximately the same time period, which indicates that the call volumes are not substantially dissimilar.[85] Thus, we decline to adjust BOC per-phone average

[80] *See Report and Order*, 11 FCC Rcd at 20,603-04, para. 124 (citing *ex parte* Letter to William Caton, FCC from Michael Kellogg, LEC Coalition (Aug. 23, 1996)).

[81] *See id.* The following independent PSPs reported call volumes: Peoples Telephone Company, Inc. (Peoples): 129 calls; Communications Central, Inc. (Communications Central): 130 calls; Telaleasing Enterprises, Inc. (Telaleasing): 124 calls; and APCC: 140 calls. The average of these numbers results in 131 calls per-phone per month. *Id.*

[82] *Id.* at 20,544, para. 3.

[83] Moreover, other independent PSPs, such as Peoples, submitted call volumes in the range of 139 calls per payphone per month, which is less than call volumes realized by some of the BOCs. *See* Peoples Comments at 6. Some independent PSPs submitted data indicating slightly higher call volumes than some of the BOCs. *See, e.g.*, Communications Central, Inc. Comments (Aug. 26, 1997) at 8 (157 calls); Telaleasing Comments (Aug. 26, 1997) at 2 (163 calls). With regard to the APCC data, MCI argues that APCC's call volumes lack "evidence of statistical validity." MCI argues that APCC does not discuss how call volume samples were drawn and further how the samples are representative of all independent PSPs. In addition, MCI argues that there is no explanation of why the number of payphones in the sample vary from month to month. *See* Letter to Magalie Roman Salas, FCC from Leonard Sawicki, MCI (Mar. 19, 1998). We note that although MCI has been tracking calls from independent payphones during the relevant period through the use of LEC ANI lists, MCI declined to place in the record any such information concerning the average number of compensable calls from such payphones.

[84] *See* Letter to Rose Crellin, FCC from Michael Kellogg, Counsel, Coalition (Mar. 24, 1998).

[85] *See* Letter to Mary Beth Richards, FCC from Albert Kramer, APCC (Mar. 5, 1998).

call volumes IXCs calculate pursuant to the methodology in this waiver order to reflect a multiplier to increase the number of calls per-phone paid to independent PSPs.[86]

d. *Payphone on non-equal access switches*

30. The fourth category involves payphones on non-equal access switches. Non-equal access switches do not provide payphone-specific coding digits; therefore, these payphones must be compensated on a per-phone basis until they are able to provide payphone-specific coding digits. Both IXCs and LECs have indicated that payphones served by non-equal access switches receive lower call volumes than other payphones.[87] The data on the record regarding these payphones is limited. GTE indicates that it has a total of 289 payphones on non-equal access switches, which receive an average of 14.35 calls per payphone per month,[88] and a small company in Iowa, Heart of Iowa Telecommunications Cooperative, which maintains 11 payphones, receives an average of 65 calls per payphone per month. Based on this limited data submitted on the record illustrating that call volumes for payphones on non-equal access switches and switches in rural areas receive substantially less calls than BOC dumb payphones, we conclude that payphones on non-equal access switches cannot be compensated based on the average call volumes for BOC dumb payphones. Accordingly, payors must compensate payphones served by non-equal access switches based on the weighted average of call volumes submitted in this record for payphones served by non-equal access switches and payphones served by rural switches, 16 calls per-

---

[86] We tested whether the call volumes reported by the LEC Coalition were significantly different from the independent payphone providers. In an ex parte letter, the Coalition provided call volumes for three different BOCs. *See* Letter to Rose M. Crellin, FCC from Michael K. Kellogg (Mar. 27, 1998) (providing the following average call volumes: BOC A: 146.15; BOC B: 131.88; and BOC C: 140.75 calls per-phone per month). Four different independent PSPs also provided updated call volumes. *See* Letter to Magalie Roman Salas, Secretary, FCC from Robert F. Aldrich, APCC at Attachment (Mar. 26, 1998) (reporting 159 calls); Communications Central (Aug. 1997) Comments at 8 (reported 157 calls); Peoples (Aug. 1997) Comments at 6 (reporting 139 calls); and Telaleasing (Aug. 1997) Comments at 2 (reporting 163 calls). We used a standard statistical t-test with a 95% confidence level to determine if the mean from the LEC Coalition sample of call volumes was different from the sample of call volumes provided by independent PSPs. *See, e.g.*, SNEDECOR & COCHRAN, STATISTICAL METHODS 115 (6th ed. 1976). Given the variability of the data, we could not conclude that the average number of calls for independent PSPs is significantly different from the average number of calls for BOC PSPs.

[87] *See, e.g.*, Letter to Magalie Roman Salas, Secretary, FCC from L. Marie Guillory and R. Scott Reiter, National Telephone Cooperative Association (NTCA) (Jan. 27, 1998; Apr. 3, 1998) (providing call volumes for one small company in Iowa, with 11 payphones on an equal access switch, averaged 65 calls per-phone per month; Letter to Magalie Roman Salas, Secretary, FCC from Keith Townsend, United States Telephone Association (USTA) (Dec. 2, 1997) (stating that small and midsize LECs have an average of 5.6 payphones per switch); MCI Comments at 3-4 & n.9 (arguing that most payphones with non-equal access switches are in rural areas and therefore should receive less compensation than other payphones); Letter to Rose M. Crellin, FCC from Michael K. Kellogg, Coalition (Apr. 2, 1998) (stating that GTE has 289 payphones on 38 non-equal access switches that carry, on average, 14.35 subscriber 800 and access code calls per payphone per month).

[88] We also note that the number of payphones on non-equal access switches is small in comparison to payphones on equal access switches, and moreover, none of the RBOCs continue to use non-equal access switches. Thus, data pertaining to these payphones is limited.

phone per month.[89]

31. We expect that parties will submit additional information on the record regarding call volumes for non-equal access areas.[90] If we receive additional record information on call volumes for non-equal access payphones that suggests that call volumes are different than the data upon which we rely herein, we will consider revisions to the compensation methodology for payphones served by non-equal access switches.

e. *Payphones served by LECs granted small and midsize LEC waiver*

32. In the *Bureau Coding Digit Order*, we granted a limited waiver to midsize and small LECs for equal access switches where a LEC is unable to recover its costs of implementing FLEX ANI, through a monthly charge for no longer than a 10 year period, from all payphones in its serving area.[91] This waiver was specifically granted for small and midsize LECs for which the cost of implementing FLEX ANI would be unreasonably burdensome, despite provisions in the *Bureau Coding Digit Waiver Order* for cost recovery.[92] This waiver was provided for small and midsize LECs with a small number of payphones per switch. We conclude that payphones served by LECs that would qualify for this waiver will be located predominantly in rural areas and would have lower call volumes than BOC dumb payphones. We conclude that the call volumes for payphones served by these LECs would be similar to those evaluated above for determining the call volume for payphones served by non-equal access switches. If we receive additional information on the record that indicates different call volumes for LECs that have deferred FLEX ANI implementation pursuant to the small and midsize LEC waiver, we may subsequently require different call volumes for these two categories. Therefore, if payphone-specific coding digits are not available for payphones served by these LECs, IXCs choosing to pay per-phone compensation instead of per-call compensation pursuant to the waiver granted herein for these payphones must pay per-phone compensation as described above for payphones served by non-equal access switches until payphone-

[89] The weighted average is derived as follows: 289 GTE payphones x 14.35 calls per payphone per month = 4147.15 total calls. We then determined the total number of calls for the small payphone company in Iowa: 11 x 65 = 715 calls. Finally, we found the total number of calls to be 4862.15 (4147.15 + 715) and divided that by the total number of payphones (300), which results in an average call volume of 16 calls per-phone per month.

[90] *See, e.g.,* Letter to Rose Crellin, FCC from Keith Townsend, USTA (Apr. 2, 1998) (stating that within ninety (90) days, USTA will develop sufficient data to support development of a compensation scheme under which payphones served by non-equal access end offices can be compensated).

[91] This limited waiver for small and midsize LECs that are not able to recover their costs of implementing FLEX ANI over up to a 10 year period is not available to price cap, CLASS A, and Tier 1 LECs. In 1996, the Class A LECs included all price cap LECs. *See Bureau Coding Digit Waiver Order* at para. 76.

[92] For determining whether a small or midsize LEC qualifies for this waiver, the *Bureau Coding Digit Waiver Order* provides an analysis that must be performed annually by the LEC. The LEC may assume that the payphone rate element established to recover the cost from all payphones in its serving area over a period not greater than 10 years would not be greater than 20% of the national average payphone line cost of $38.90, or $7.78, per line per month. *Id.*

specific coding digits are available for these small and midsized LEC payphones.

3. Alternative Compensation Methodologies

33. We decline to adopt, as some parties recommend, the flat-rate interim compensation approach set forth in the *Payphone Orders*, which required IXCs with annual toll revenues in excess of $100 million to pay, collectively, a flat-rate interim compensation amount of $45.85 per payphone per month, in shares proportionate to their share of total market long distance revenues.[93] In *Illinois Public Telecomm.*, the court vacated the Commission's flat-rate interim compensation plan stating that the Commission did not justify basing flat-rate compensation on total toll revenues, and therefore, acted arbitrarily and capriciously by only requiring payments from the largest IXCs. The court further stated that the Commission had not shown a nexus between toll revenues and the number of access code and subscriber 800 calls a particular carrier carries.[94] Moreover, even if we were to base payphone compensation on toll revenues, we note that we cannot address the court's concern that the Commission acted arbitrarily by only requiring payments from the largest IXCs, because the Commission does not maintain adequate data for those carriers with annual toll revenues under $100 million.[95]

34. We also decline to adopt the method for per-phone compensation suggested by the LEC Coalition. The LEC Coalition provided the Commission with aggregated call volume and distribution data for subscriber 800 and access code calls transmitted from dumb and smart payphones owned by three BOCs—US West, Bell Atlantic South, and Pacific Bell—that the LEC Coalition states comprise approximately 20 percent of the nation's total payphones.[96] The LEC Coalition argues that those carriers unable to pay per-call compensation and who have filed timely waivers with the Commission should pay per-phone compensation based on the call volume and distribution data supplied by the LEC Coalition.

---

[93] *See id.* AT&T argues that the number of calls established for the interim flat-rate period should be applied for determining compensation for the waiver period. Thus, AT&T opposes APCC's and the LEC Coalition's request that the Commission use the number of calls adopted in the *Second Report and Order* to determine the number of calls for which compensation is due during the waiver period. *See* AT&T Reply at 8. AT&T also opposes the following: requiring that payments be made monthly; that there be provisional payments and two true-ups; and that per-phone compensation during the waiver period be limited to subscriber 800 calls. *See* AT&T Reply at 9. APCC supports a waiver to allow IXCs to continue paying compensation on a flat-rate basis. APCC argues, however, that the Commission should condition the IXC waivers on monthly compensation payments. APCC argues that the flat-rate should be provisional subject to true-up and based on the current estimate of 159 average calls. APCC argues that payors should be IXCs over $100 million annual revenue. As an alternative APCC suggests that the Commission require IXCs as a condition of waivers to report their annual service revenue to the Commission to be the basis of the provisional compensation allocation. APCC recommends that the flat-rate waiver apply to all dumb payphone lines that do not transmit payphone-specific coding digits. *See* Letter to Magalie Roman Salas, Secretary, FCC from Albert Kramer, APCC (Mar. 26, 1998).

[94] *Illinois Public Telecomm.*, 117 F.3d at 565.

[95] *Remand Notice* at 4.

[96] *See* Letter to Rose Crellin, FCC from Michael K. Kellogg, LEC Coalition at 2 (Mar. 27, 1998).

Alternatively, the LEC Coalition argues that the Commission could use the call volume data to allocate the shares of, for example, the ten to fifteen largest carriers, and require the remainder of the carriers to pay per-call compensation. The LEC Coalition recognizes, however, that the data may not be as appropriate for smaller carriers, who could face "disproportionate burdens because the data submitted are not comprehensive."[97] We decline to use this information as an approach for determining per-phone compensation because it may not be representative of all BOCs, may reflect regional variations, and provides insufficient information to establish per-phone call volumes for small carriers, one of the grounds identified by the court for vacating the allocation method used in the *Report and Order* that was vacated by the court. For the above reasons, we find that allowing IXCs to pay compensation in accordance with the methodology set forth in the waiver is preferable and more closely approximates the real obligations of individual IXCs to pay per-call compensation. We note, however, that the information provided by the LEC Coalition may be useful to IXCs and PSPs in considering mutually agreeable alternate payment amounts or arrangements.

35. We also conclude that a retroactive adjustment of payphone compensation for the period covered by the *Bureau Waiver Order* and the *Bureau Coding Digit Waiver Order* is not necessary. In the *Bureau Coding Digit Waiver Order*, the Bureau stated that because LECs and IXCs have identified problems in transmitting and receiving payphone-specific coding digits, a retroactive adjustment of payphone compensation may be necessary for the waiver periods granted in the *Bureau Waiver Order* and the *Bureau Coding Digit Waiver Order*.[98] In this order we do not provide for a retroactive adjustment because we conclude that the methodology we have adopted to provide fair compensation through a per-phone mechanism reasonably approximates call volumes for PSP payphones. Because the court vacated our approach set forth in the *Report and Order* for setting per-phone compensation, and parties in this proceeding have not provided more specific information on the record that we could use to develop an alternative method of estimating average call volumes, we have reasonably concluded that on average, BOC dumb payphone call volumes calculated as described herein provide fair compensation for payphones that are unable to provide payphone-specific coding digits to enable IXCs to track calls on a per-call basis. Moreover, we do not provide for a retroactive adjustment because the alternative proposed methods suggested by parties for a retroactive adjustment are not based on actual information from the relevant periods, and thus, would not provide a more valid call volume surrogate than the method we adopt herein. We note that there is wide variation in payphone call volumes due to such factors as location of the

---

[97] The call volumes and distribution for the top ten carriers by call volumes reported by the LEC Coalition are as follows: (1) AT&T: average calls per station per month 52.32; percentage of average calls per month total: 37.08%; (2) MCI: average calls per station per month 35.74; percentage of average calls per month total 25.33%; (3) WorldCom: average calls per station per month 17.17; percentage of average calls per month total 12.17%; (4) Sprint: average calls per station per month 15.18; percentage of average calls per month total 10.76%; (6) LCI: average calls per station per month 3.99; percentage of average calls per month 2.83%; (7) Frontier: average calls per station per month 3.89; percentage of average calls per month 2.83%; (8) BOC weighted average: average calls per station per month 3.09; percentage of average calls per month 2.75%; (9) Allnet Dial 1 Service: average calls per station per month 1.60; percentage of average calls per month 1.14%; and (10) Cable & Wireless: average calls per station per month 1.33; percentage of average calls per month 0.95%. *Id.* at 3.

[98] *See Natural Gas Clearinghouse v. FERC*, 965 F.2d 1066, 1073-75 (D.C. Cir. 1992); *Public Utils. Comm'n of California v. FERC*, 988 F.2d 154, 162-63 (D.C. Cir. 1993).

payphone and the month for which volumes are counted. Per-call compensation, once it is totally in place, will respond to those variations. In the meantime, while PSPs, IXCs, and LECs are transitioning to the new per-call environment, and finding temporary problems in transitioning, we conclude that the methodology we describe herein is equitable and will ensure that payphone compensation to PSPs is not further delayed.

4. Miscellaneous

36. We decline to require, as USTA requests, that LECs be compensated for all blocked calls because blocked calls are the result of IXCs using FLEX ANI or LIDB for fraud detection, pursuant to CC Docket No. 91-35.[99] In the *Report and Order*, the Commission concluded that payphone compensation was due for completed calls.[100] The Commission defined a completed call as a call answered by the called party. Because a blocked call is by definition not a completed call, the *Payphone Orders* do not require such compensation.

37. The LEC Coalition and USTA request that any waiver granted in response to AT&T's request should be granted only after IXCs have paid interim compensation and only to IXCs that demonstrate that they cannot track compensable calls using LEC ANI lists.[101] We decline to adopt this approach. Interim compensation requirements will be addressed in a separate, subsequent Commission order. In this order, we grant a waiver to AT&T and other similarly situated carriers, conditioned upon complying with the compensation methodology set forth herein, which provides per-phone payphone compensation for payphones unable to provide payphone-specific coding digits. We grant this waiver to ensure that PSPs receive payphone compensation during the waiver periods we granted in the *Bureau Waiver Order* and *Bureau Coding Digit Waiver Order*. Moreover, we allow IXCs to pay either per-call or per-phone compensation when payphone-specific coding digits are not available because of the different tracking capabilities and network configurations described by the IXCs.[102]

38. APCC requests that we clarify the obligations of facilities-based IXCs who provide 800 service to disclose information about switch-based resellers who provide 800 number service resold from the facilities based carriers so that PSPs can identify who they should bill for payphone compensation. APCC indicates that its members are unable to identify the switch-based reseller to bill for payphone compensation. The Telecommunications Resellers Association (TRA) opposes APCC's request arguing that it is unnecessary and burdens IXCs.[103] In the *Report and Order*, the Commission acknowledged that

---

[99] USTA Reply at 7-8.

[100] *Report and Order*, 11 FCC Rcd at 20,573, para. 63.

[101] *See* USTA Reply at 8; *see also* LEC Coalition Comments at 4.

[102] *See e.g.*, *AT&T Letter* at 1-3; Letter to Magalie Roman Salas, Secretary, FCC from Richard S. Whitt, WorldCom (Mar. 5, 1998).

[103] *See* Letter to Magalie Roman Salas, Secretary, FCC from Charles C. Hunter, TRA (Mar. 31, 1998).

telecommunications services are sold in advance, particularly in the debit card context, and resold to other carriers, thus making it difficult in those situations to identify the carrier liable for per-call compensation. The Commission also stated that facilities-based carriers may recover the expense of payphone per-call compensation from their reseller customers. As clarified in the *Order on Reconsideration*, switched-based resellers are responsible for paying per-call compensation.[104] When facilities-based IXCs providing 800 service have determined that they are not required to pay compensation on particular 800 number calls because their switch-based resale customers have identified themselves as responsible for paying the compensation, the facilities-based carriers must cooperate with PSPs seeking to bill for resold services. Thus, a facilities-based carrier must indicate, on request by the billing PSP, whether it is paying per-call compensation for a particular 800 number. If it is not, then it must identify the switch-based reseller responsible for paying payphone compensation for that particular 800 number. Facilities-based IXCs and switched-based resellers may not avoid compensating PSPs by withholding the name of the carrier responsible for paying per-call compensation, thereby avoiding the requirements of the *Payphone Orders* and Section 276.

IV. CONCLUSION AND ORDERING CLAUSES

39. For the foregoing reasons, we grant in part AT&T's letter request to pay per-phone compensation to PSPs where payphone-specific coding digits are not available. We find that allowing AT&T and other similarly situated IXCs to pay per-phone instead of per-call compensation based on the methodology set forth above, is in the public interest, because it will further the goals of Section 276 of the Act, that PSPs be compensated for each and every completed call and will ease the transition to per-call compensation.

40. Accordingly, pursuant to authority contained in Sections 1, 4, 201-205, 218, 226, and 276 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 201-205, 218, 226, and 276, that the policies and requirements set forth herein ARE ADOPTED.

41. IT IS FURTHER ORDERED that this Order is effective immediately upon release thereof.[105]

42. IT IS FURTHER ORDERED that AT&T's letter request to pay on a per-phone instead of a per-call basis IS GRANTED to the extent described herein and is otherwise DENIED.

A. Richard Metzger

A. Richard Metzger, Jr.
Chief, Common Carrier Bureau

---

[104] *Order on Reconsideration*, 11 FCC Rcd at 21,277, para. 92.

[105] We find that good cause exists for these waivers to be effective immediately. *See supra* para. 4.